

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop S2-26-12  
Baltimore, Maryland 21244-1850



**Center for Medicaid and State Operations**

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Mr. Stan Rosenstein  
Deputy Director  
Medical Care Services  
Department of Health Services  
1501 Capitol Avenue, Suite 71.6086 M/S 4000  
Sacramento, California 94234-7320

JUN 14 2005

Dear Mr. Rosenstein:

This is in response to your request for waiver of the broad-based and uniformity requirements related to a tax on nursing facility patient days. Upon review and consideration of the information formally provided to the Center for Medicare & Medicaid Services (CMS) on September 30, 2004 and March 21, 2005, I am pleased to inform you that your request for waiver of the broad-based and uniformity provisions of sections 1903(w)(3)(B) and (C) of the Social Security Act (the Act) is approved.

The tax structure for which California requested waiver would be imposed as follows:

- (i) Continuing care retirement communities are excluded from the tax;
- (ii) Distinct part nursing facilities are excluded from the tax;
- (iii) Pediatric subacute beds in free standing nursing facilities are excluded from the tax;
- (iv) Institutions for Mental Diseases that provide skilled nursing facility care are excluded from the tax;
- (v) Multi-level care facilities are excluded from the tax;
- (vi) State or publicly owned and operated nursing facilities are excluded from the tax;
- (vii) Nursing facilities with 100,000 or more total annual resident days will be assessed \$6.33 per patient day; and
- (viii) Nursing facilities with less than 100,000 total annual resident days will be assessed \$7.33 per patient day.

Section 1903(w)(3)(E) of the Act specifies that the Secretary shall approve uniformity (and broad-based) waiver applications if the net impact of the tax is generally redistributive and that the amount of the tax is not directly correlated to Medicaid payments.

The Federal regulation at 42 CFR 433.68(e)(2) describes the statistical test necessary for a State to demonstrate that the proposed structure is generally redistributive. California's statistical demonstration is addressed below. Moreover, the Federal regulation at 42 CFR 433.68(f) describes the circumstances in which a direct correlation would exist. Upon review of the California statute implementing the proposed nursing facility tax and the review of California's proposed methodology for increasing Medicaid reimbursement to nursing facilities, it appears that no direct correlation exists between the associated increase in Medicaid reimbursement.

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### Analysis

To determine the generally redistributive nature of the proposed nursing facility patient day tax, California calculated the slope (expressed as B1) of a linear regression for a broad-based and uniform tax in which the dependent variable was each nursing facility's percentage share of the total tax paid, if the tax was uniformly imposed on all nursing facility patient days in the State and the independent variable was each nursing facility's number of Medicaid patient days. California then calculated the slope (expressed as B2) of a linear regression for the State's actual proposed tax program in which the dependent variable was each nursing facility's percentage share of the total tax paid and the independent variable was the number of Medicaid patient days for each nursing facility.

Using the patient day and tax rate data you provided, CMS also performed the regression analysis calculations required in the regulations for the proposed tax. CMS finds that the result of the generally redistributive calculation for the California nursing facility patient day tax is 1.071.

Therefore, we are able to approve your request for waiver of the broad-based and uniformity provisions of sections 1903(w)(3)(B) and (C) of the Act for the proposed nursing facility patient day tax. Please be advised that any future changes to the taxing structure, including a non-uniform change to the approved tax rates, will require the State of California to submit a new broad-based and/or uniformity waiver request.

The Federal regulations at 42 CFR 433.72(c)(1) specify that a waiver will be effective for tax programs commencing on or after August 13, 1993, on the first day of the calendar quarter in which the waiver is received by CMS. CMS received the State of California's initial request for waiver of the broad-based and uniformity requirements on September 30, 2004, with a requested effective date of August 1, 2004. Therefore, the effective date of California's request for waiver of the broad-based and uniformity requirements is August 1, 2004.

CMS reserves the right to perform a financial management review at any time to ensure that the State operation of the tax on nursing facilities continues to meet the requirements of section 1903(w) of the Act.

I hope this information addresses all of your concerns. If you have further questions or need additional information please contact Jim Frizzera at (410) 786-9535.

Sincerely,

  
Dennis G. Smith  
Director